

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Tyrone Perry, #307793,	)	Civil Action No. 1:16-824-BHH
	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER AND OPINION</b>
	)	
South Carolina Department of Corrections,	))	
	)	
Defendant.	)	
_____	)	

Plaintiff Tyrone Perry ("Plaintiff"), proceeding *pro se* and *in forma pauperis*, filed this matter in the Court of Common Pleas for Richland County, South Carolina. (ECF No. 1-1). The South Carolina Department of Corrections ("Defendant") removed the action to this court on March 14, 2016. [ECF No. 1]. Plaintiff filed a motion to remand the case back to state court (ECF No. 13), and the matter is now fully briefed.

In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02 for the District of Shiva V. Hodges for pretrial handling. The matter is now before this Court for review of the Report and Recommendation ("Report") issued by the Magistrate Judge on May 13, 2016. (ECF No. 18.)

In the Report, the Magistrate Judge recommends that Plaintiff's motion to remand (ECF No. 13) be granted because "Plaintiff has made clear that his intention is to pursue only state law claims." (ECF No. 18 at 3-4.) Defendant filed an Objection in which it contends that Plaintiff has not abandoned his First Amendment cause of action and, therefore, remand cannot be granted on that basis. (ECF No. 20.) However, Defendant states that "if Plaintiff has truly deserted all federal causes of action in this matter, then Defendant withdraws its objection and agrees with remand to state court." (*Id.* at 2.) Plaintiff filed a Reply stating that he "agree[s] with the Magistrate's Report" recommending this case be remanded to state court. (ECF No. 21.)

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270–71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, the Court need not conduct a *de novo* review when a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982). In the absence of a timely filed, specific objection, the Magistrate Judge’s conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

The Court has reviewed Defendant’s Objection *de novo* and agrees that Plaintiff’s pleadings and responses indicate that he did not abandon his First Amendment cause of action prior to the issuance of the Report. However, after Defendant filed its Objection to the Report, Plaintiff filed a Reply stating that he “agree[s] with the Magistrate’s Report . . . and do[es] NOT object to the Report.” (ECF No. 21.) In so stating, Plaintiff accepts the Magistrate Judge’s finding that Plaintiff’s “intention is to pursue only state law claims.” (ECF No. 18 at 4.) Thus, the Court finds that Plaintiff’s response clarifies that he has unequivocally abandoned his federal claims. Accordingly, the Court **ACCEPTS** and incorporates the Report (ECF No. 18), by reference in this Order. It is therefore

**ORDERED** that Plaintiff’s motion to remand to state court (ECF No. 13) is **GRANTED**, and this action is remanded to the Court of Common Pleas, Richland County,

South Carolina, for disposition. The Clerk of this Court is directed to forward the file along with a certified copy of this order to the Clerk of Court for Richland County.

/s/Bruce Howe Hendricks  
United States District Judge

July 29, 2016  
Greenville, South Carolina